IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE.

CRIMINAL APPEAL NO. 510 OF 1997

The State of Maharashtra ..... Appellant

versus

1. Hiraman @ Hiraji Bandu Ghare
and 15 others ..... Respondents

.....

Shri D.R. More for the State/appellant.
None for the respondents.

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CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATED : 9TH AUGUST, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1. Being aggrieved by the judgment dated 21-2-1997 passed by the Additional Sessions Judge, Raigad -Alibag in Sessions Case No. 64 of 1994 appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the

appellant and the learned APP, we have srcutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case as disclosed on our reappreciation of the oral and documentary evidence on record stated briefly is that all the accused persons are residents of village Umaroli, Taluka Karjat, District Thane. In this village there are about 30 families belonging to Ghare and similar number of families belonging to Longale and there is long standing enmity between these two families. The enmity arose because of dispute over agricultural land and rights to use of water. On 17-5-1003 at about 7.00 p.m. deceased Shivaji was going to the house of his uncle and was followed by one Malu. According to the prosecution when Shivaji rached near the house of accused no.6 Jaitu he was assaulted by accused no. 6, others came there, they also assaulted Shivaji. The women members of his family who are also accused, threw chilli power in the eyes of Shivaji. In this assault P.w. 1 Malu was also injured. He went to the police station and registered Crime No.38 of 1993, investigation was undertaken by the police and 16 persons belonging to Ghare family were prosecuted under section 147, 148,149 and 302 of IPC. During the trial, the learned Additional Sessions Judge recorded evidence of 9 witnesses and on appreciation of this evidence, came to the conclusion that the prosecution has failed to prove beyond reasonable doubt the guilt of the accused persons and therefore proceeded to

acquit all the accused. It is this acquittal which is subjected to challenge in this appeal by the State.

4. It was canvased by the learned APP Shri Deepak More that the learned trial Judge committed error in rejecting the ocular testimony of eye witnesses. According to him the contradictions which did exist in the testimony of these eye witnesses were natural and therefore should have been ignored. He contended that there was intrinsic evidence on record to prove involvement of the accused persons as the inquest panchanama discloses existence of chilli power on the person of the dead. The prosecution story being that the women of Ghare families threw chilli power in the face of Shivaji. This fact is proved by the existence of chilli powder on the body of the deceased Shivaji. It also proves, according to him, involvements of the lady in the premeditated assault on the complainant's family. We have to consider this submission in the light of the evidence as reappreciated by us. The prosecution has examined as aforesaid 9 witnesses to prove its case. Two of them are eye witnesses to the incident. But there is marked variances between the testimony of these eye witnesses, the contradictions apart from being many, are also material and therefore create a doubt as to whether all the accused persons were involved or a positive attempt was made to involve as many as Ghare family as possible. P.w. 1 Malu has named some of the accused but he has not named the women nor he has made several of the other accused persons. The other eye witnesses make up this

infirmity by naming many of the accused persons. This improvements and contradictions were noted by the learned trial Judge when he proceeded to acquit all the accused persons.

5. In para 36 of the judgment, the learned trial Judge has stated that the evidence on record proves out that Shivaji being carried to the water tank by some persons. This factual position cannot be disputed. Accordingly those persons were material witnesses to the occurrence. However the prosecution has failed to examine those witnesses. The incident has occurred in the evening. At that time villagers were there in their houses and yet no independent witness is examined except those who were directly involved in the assault.

6. The learned Judge has then pointed out that there was material variation in the deposition of doctor, who conducted post mortem. According to the doctor, there were no lacerated wound on the person of the deceased. When the evidence on record points out that the injured Shivaji was dragged for quite some distance, such dragging must result in lacerated wound, which is absent. The testimony of the witnesses who say that dragging occurred therefore becomes doubtful. There is variance in the description of the assault and the variance is so much that it also creates doubt first to what exactly transpired on the date of the incident. It is because of existence of such doubts as to the truthful version of the incident, coupled with descripences in the evidence of eye

witnesses and medical evidence, the learned Judge came to such conclusion. We have verified from the evidence and the judgment of the learned trial Judge and the infirmities pointed out by the learned Judge for coming to the conclusion that the accused deserves benefit of doubt, the marshalling of the evidence by the learned Judge was correct. In any event it is a case where two views of the evidence on record are possible, ignoring material improvements and contradictions. The learned trial Judge has by his impugned judgment accepted the inconsistencies which create reasonable doubt in the mind of a prudent man and proceeded to acquit the accused. Such course of action or such judgment cannot in any manner be termed as perverse or passed on no basis of evidence. The view taken by the learned Judge being possible, acceptance thereof by the appellate court cannot be an error. In our opinion, the learned Judge did not error in any manner in acquitting the accused persons when he noted the long standing enmity between the parties, contradictions existing on record, absence on the part of the prosecution to examine independent witnesses, lack of corroboration of the prosecution witnesses who were eye witnesses, according to which he has analysed all these evidence and has given his reasons in the finding which he has arrived at. In our opinion, such judgment does not require or warrant any interference in exercise of our appellate powers. In the result, therefore, appeal fails and it is dismissed.

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